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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,837	07/22/2005	Manfred Piontek	2619-0038WOUS	8927
35301	7590	12/11/2009	EXAMINER	
MCCORMICK, PAULDING & HUBER LLP			PATEL, TARLA R	
CITY PLACE II			ART UNIT	PAPER NUMBER
185 ASYLUM STREET				3772
HARTFORD, CT 06103				
MAIL DATE		DELIVERY MODE		
12/11/2009		PAPER		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/534,837
Filing Date: July 22, 2005
Appellant(s): PIONTEK, MANFRED

Marina F. Cunningham
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/3/09 appealing from the Office action
mailed 3/4/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC 112 rejection of claims 7-8 has been withdrawn in view of amendment to claim 7 to depend from claim 1 and arguments submitted with the appeal brief on 9/3/09 for claim 8.

The rejection of claim 5 as being obvious over Mazzei et al. has been withdrawn after further review of the rejection in light of arguments referring to elastically resilient band submitted with appeal brief filed on 9/3/09.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,490,737	Mazzei et al.	12-2002
4,279,038	Bruckner et al.	07-1981

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 1 and 3-9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Mazzei et al. (6,490,737) in view of Bruckner et al. (4,279,038).

Mazzei et al. disclose a headrest (figure 7) for a patient-bearing surface with rigid-support shell (12, column 7 lines 14-16); the shell is taught to be made from a material that is substantially rigid but easily molded like plastic; the support shell having an approximately horseshoe shaped form (said horseshoe term is broadly interpreted by the examiner to be as having u-shaped structure as shown in figures 9-11, the shape is shown to have approximately horseshoe shape; and a support cushion (figure 9)

releasably connectable (please see figure 7 and column 12 lines 22-60) with the support shell, wherein support shell include a central section (57 see fig 9) for supporting the rear or forehead (column 4 lines 42-44), since Mazzei discloses that the device is used for patients in prone or supine position at least the rear of a head of a patient is supported and the limitation that "supporting the rear or forehead of a head of a patient" is a functional recitation that has not been given any patentable weight. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6th paragraph, and must be supported by recitation in the claim in sufficient structure to warrant the presence of the functional language. *In re fuller*, 1929 C.D. 172; 388 C.D. 279., further the head rest of Mazzei et al. is capable of performing the function of supporting the forehead of a head of a patient since, it is known to be headrest (column 4 lines 42-44), and having has a support surface of approximately spherical shell shape (see figure 9), and with two side sections spaced from one another (two side section were broadly interpreted by the examiner as two side of line of symmetry as disclosed further below is one side 30 and other opposite side of 30 as shown in figure 9 is interpreted as two side of applicant's claimed limitation), whose axis runs parallel to a line of symmetry of the support shell (as broadly the examiner interpreted a line of symmetry of support shell as a line which can run right in middle of the support from the top to bottom of the support) a cheekbone (please see figure 9, 55 is cheek bone support) on each of the side sections which cheekbone support projects in the downward direction (see figure 9).

However, Mazzei et al. does not discloses the side sections each having a support surface approximately a common cylindrical shape and cheekbone support projects in the direction toward the other side section.

However, Bruckner teaches a headprotector made of elastic material for athletes having a support surface of approximately spherical shell shape (see figure 1), two side sections spaced from one another (see figure 1 that shows two side sections at reference numeral 10), the side sections each having a support surface approximately a common cylindrical shape (see figure 1), whose axis runs parallel to a line of symmetry of the support shell; the examiner has interpreted the a straight line which can run right in middle of the support from the top to bottom of the support is the line of symmetry of the support shell; and a cheek bone support (9) on each side of the side sections, each cheek bone support is projecting toward the other side section (see figure 1) since it is shown that the cheek bone support (9) is projecting towards the other side section.

Further, Buckner discloses the side sections include end portions (10) separated from each other to define an open region for mouthparts of the patient's face to fit therein (see figure 1), as shown by the end of element 10 defining a space 12 in between them which obviously fit mouthparts of the user . At the time of the invention was made, it would have been obvious design choice to one having ordinary skill in the art to modify the shape of the support shell of Mazzei et al. to have side sections each having a support surface approximately a common cylindrical shape and cheekbone support projects in the direction toward the other side section, as taught by Buckner to have comfort while providing necessary support and protection.

With respect to claim 3, the support shell is made of plastic (12, column 7 lines 14-16).

With respect to claim 4-8, Mazzei et al. discloses at least two stick pins (73) designed for insertion into through going bores (60) in the support shell, the headrest or each partial rest (see fig 7) is connected to fastening block (62) for holding it to a profiled rail (66), the headrest on the outer edge of each side section is formed an eye (space 27 and 37, see figure 7) for the fastening of a belt (24) for fixing the head of a patient to the headrest and each pin having a cylindrical shaft with cylindrical shaft (61, see fig 7) and each has an elastically resilient band with an external diameter slightly larger than the diameter of bores (see fig 7) and device is divided into two mirror image similar partial supports along its line of symmetry (see fig 7, column 12 lines 27-30).

(10) Response to Argument

Appellant's argument filed on 9/3/09 have been carefully considered but deemed not persuasive.

With respect to appellant's argument that the Bruckner and Mazzei are non-analogous art, either alone or in combination does not teach the support shell has an approximately horseshoe-shaped form as described in Webster's dictionary as being a horseshoe-shaped form with an opening between two ends, however, Mazzei teaches a protective helmet has a substantially box-shaped form, on the other hand the Bruckner teaches substantially spherical-shaped form, to these arguments the examiner respectfully would like to point out that the claimed invention on instant application is reciting a approximately horseshoe-shaped support, not just horseshoe-shaped,

therefore, when approximately horseshoe-shaped is claimed, it definitely allows some deviation to horseshoe-shape of support shell. Therefore, Mazzei does teach an approximately horseshoe-shape with some deviation to horseshoe-shape. Further, Bruckner reference is used for teaching of having side sections having cylindrical shape and cheekbone support on each of the side sections projecting toward the other side section. The examiner also would like to point out the Bruckner and Mazzei both are used on face of the user and Bruckner when used by the user can be used as a support shell, therefore, Bruckner and Mazzei both are analogous art, further, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bruckner and Mazzei both are used on face of the user and Bruckner when used by the user can be used as a support shell, therefore, Bruckner and Mazzei both are analogous art. Bruckner is a head protector for athletes however, could still be used as support shell to support head.

With respect to appellant's argument to claim 9, please refer to response to argument above addressing horseshoe-shaped and side sections having approximately a common cylindrical shape.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Tarla R Patel/

Examiner, Art Unit 3772

Conferees:

Patricia Bianco

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772

Tatyana Zalukaeva

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761